

Effective January 1, 2001 prepaid telephone calling card arrangements were no longer taxable under the Telecommunications Excise Tax Act, but became taxable as tangible personal property under the Retailers' Occupation Tax Act, Service Occupation Tax Act, Service Use Tax Act and Use Tax Act. See Public Act 91-0870. (This is a GIL).

March 7, 2003

Dear Xxxxx:

This letter is in response to your letter dated November 6, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

AAA requests a written opinion as to the sales taxability to our customers on the purchases of the following items:

1. PrePaid Internet Service - a prepaid card that the consumer purchases for a specified amount of internet access time. The card comes with a Start-Up CD, which needs to be loaded initially on the computer to gain access to the service. There is no monthly fee. However, the consumer is still subject to any related charges and taxes for use of the telephone line to connect to the service. These charges are billed separately by the telecommunications carrier.

2. 'Prepaid Internet Service Refill Card - a prepaid card that consumers purchase to add additional minutes to their 'already established' prepaid internet service account. This product is similar to the above item, except that there is no Start-Up CD.

Please find attached additional detailed information regarding this 'prepaid card.' This information was taken directly from XYZ's website.

Thank you for your assistance in this matter. If you have any questions please feel free to contact me.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of

tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101.

Based upon the information in your letter, the "Start-Up CD" would likely be considered canned computer software. Generally, sales of "canned" computer software are taxable retail sales in Illinois. See 86 Ill. Adm. Code 130.1935. Sales of canned software are taxable regardless of the means of delivery. For instance, the transfer or sale of canned computer software downloaded electronically would be taxable. However, we believe that the transfer of Start-Up CD described in your letter is merely incident to the sale of Internet services. Therefore, no Retailers' Occupation Tax liability would normally be incurred on the transfer of that Start-Up CD, but the transaction may result in either Service Occupation Tax or Use Tax liability depending upon your company's activities and whether the sale of those services occur in this State. For your general information see 86 Ill. Adm. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

The Illinois Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons, 35 ILCS 630/3 and 4. The tax imposed thereunder shall be collected from the taxpayer by a retailer maintaining a place of business in this State and remitted to the Department, 35 ILCS 630/5. Generally, persons that provide subscribers access to the Internet and who do not, as part of that service, charge customers for the line or other transmission charges which are used to obtain access to the Internet, are not considered to be telecommunications retailers. See 86 Ill. Adm. Code 495.100(d).

It is our general understanding that most Internet access providers do not, as part of their billing, charge customers for such line charges, but instead, pay to their telecommunications providers all transmission costs that they incur in providing the service. Generally, the customers pay to their providers all transmission costs that they incur while using the service. The single monthly fee charged by such retailers, which often represents a flat charge for a package of items including Internet access, E-mail, and electronic newsletters would generally not be subject to the Telecommunications Excise Tax.

Please note that, effective January 1, 2001, prepaid telephone calling card arrangements became taxable as tangible personal property under the Retailers' Occupation Tax Act, Service Occupation Tax Act, Service Use Tax Act and Use Tax Act rather than the Telecommunications Excise Tax Act. See 35 ILCS 120/2-27.

Your letter indicated that any charges for the use of the telephone line to connect to the Internet service is billed separately by the telecommunications carrier. If this is the case and no telecommunications are provided as part of the prepaid Internet services, we believe that the charges for the prepaid cards and refills are not subject to Retailers' Occupation Tax and Use Tax liability.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk